

Senate Amendment 5238

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1 1 Amend Senate File 2350 as follows:
1 2 #1. By striking everything after the enacting
1 3 clause and inserting the following:
1 4 <SUBCHAPTER I
1 5 GENERAL PROVISIONS
1 6 Section 1. NEW SECTION. 171.101 DEFINITIONS.
1 7 As used in this chapter, unless the context
1 8 otherwise requires:
1 9 1. "Authorized department" means the department of
1 10 agriculture and land stewardship or the department of
1 11 natural resources.
1 12 2. "Custody or control" means to keep swine in a
1 13 manner that prevents the release or escape of the
1 14 swine from containment at all times, including keeping
1 15 swine for breeding, growing, or transport.
1 16 3. "Department" means the department of
1 17 agriculture and land stewardship.
1 18 4. "Estray swine" means swine that are not in the
1 19 custody or control of a responsible party.
1 20 5. "Feral swine" means swine that are classified
1 21 as part of the species sus scrofa linnaeus which may
1 22 be commonly known as Russian boar or European boar of
1 23 either sex.
1 24 6. "Landholder" means a titleholder or leaseholder
1 25 of land.
1 26 7. "Local authority" means a county as provided in
1 27 chapter 331 or a city as defined in section 362.2.
1 28 8. "Move" or "movement" means to ship, transport,
1 29 or deliver swine by land, water, or air.
1 30 9. "Public land" means land owned by the federal
1 31 government, the state, or a local authority.
1 32 10. "Responsible party" means a person who owns or
1 33 has custody or control of swine, including by
1 34 providing for the care and feeding of the swine.
1 35 11. "Swine" means an animal belonging to the order
1 36 artiodactyla, and classified as part of the family
1 37 suidae.
1 38 12. "System" means the feral swine reporting
1 39 system established pursuant to section 171.202.
1 40 13. "Take" means to kill or attempt to kill a
1 41 feral swine by a person other than the owner of the
1 42 feral swine.
1 43 Sec. 2. NEW SECTION. 171.102 STATE PUBLIC
1 44 NUISANCE SWINE ERADICATION POLICY == AGENCY
1 45 COOPERATION.
1 46 1. The following classes of swine are declared to
1 47 be a public nuisance:
1 48 a. Feral swine, regardless of whether the swine
1 49 are in a person's custody or control.
1 50 b. Estray swine.
2 1 c. Swine which are produced or maintained to
2 2 provide persons with the opportunity to hunt the
2 3 swine.
2 4 2. Swine which are a public nuisance are subject
2 5 to a policy of eradication as administered by the
2 6 department of agriculture and land stewardship
2 7 pursuant to this chapter.
2 8 3. a. The department of agriculture and land
2 9 stewardship shall be the principal enforcement agency
2 10 charged with carrying out the policy.
2 11 b. The department of natural resources shall
2 12 cooperate with the department of agriculture and land
2 13 stewardship in carrying out the policy. The
2 14 authorized departments shall periodically consult
2 15 about how to most effectively contribute resources and
2 16 their respective expertise, and divide jurisdictional
2 17 responsibility, including the assignment of
2 18 investigative personnel where appropriate. However,
2 19 the department of natural resources shall regulate
2 20 hunting preserves under chapter 484B or 484C, and the
2 21 regulation of persons taking animals under Title XI,
2 22 subtitle 6.
2 23 c. The department of agriculture and land
2 24 stewardship shall cooperate with the animal and plant

2 25 health inspection service of the United States
2 26 department of agriculture, and may enter into
2 27 cooperative agreements with the animal and plant
2 28 health inspection service in order to carry out the
2 29 provisions of this chapter.

2 30 SUBCHAPTER II

2 31 FERAL SWINE

2 32 Sec. 3. NEW SECTION. 171.201 FINDINGS AND
2 33 DECLARATION.

2 34 1. The general assembly finds all of the
2 35 following:

2 36 a. Feral swine are known carriers of a variety of
2 37 diseases including but not limited to pseudorabies,
2 38 swine brucellosis, leptospirosis, and trichinosis
2 39 impacting upon this state's domestic livestock herds
2 40 and especially its domestic swine herds.

2 41 b. Feral swine carry diseases which may be
2 42 transmitted to human populations.

2 43 c. Feral swine disrupt native wildlife and destroy
2 44 native habitat.

2 45 d. Feral swine damage or destroy cropland and row
2 46 crops, including but not limited to corn and soybeans.

2 47 2. a. The general assembly declares that the
2 48 increased movement of feral swine into this state
2 49 presents an immediate and serious risk to the state's
2 50 economy, public health, and ecosystems.

3 1 b. The general assembly further declares that the
3 2 state establishes a policy to eradicate all feral
3 3 swine from this state with all possible speed.

3 4 Sec. 4. NEW SECTION. 171.202 FERAL SWINE
3 5 REPORTING SYSTEM == PENALTY.

3 6 1. a. The department of agriculture and land
3 7 stewardship shall establish a feral swine reporting
3 8 system, in cooperation with the department of natural
3 9 resources. The system may include receipt of reports
3 10 by any of the following:

3 11 (1) Automated toll-free telephone number.

3 12 (2) Postcard.

3 13 (3) Electronic communication at an electronic
3 14 licensing location.

3 15 (4) Electronic communication to the department
3 16 including by the internet.

3 17 b. The department of natural resources shall
3 18 maintain a database of information collected by the
3 19 system which shall be made available to the department
3 20 of agriculture and land stewardship.

3 21 2. The system shall allow persons to conveniently
3 22 report the presence of a feral swine to an authorized
3 23 department. Either authorized department may conduct
3 24 the investigation or refer the report to the local
3 25 authority responsible for the prevention and detection
3 26 of crime in the jurisdiction where the swine is found.

3 27 3. a. The system shall provide for reports by
3 28 persons who have taken or injured feral swine in this
3 29 state. A person who has taken or injured feral swine
3 30 in this state shall report to an authorized department
3 31 within ten days after taking the swine. The report
3 32 shall include at least all of the following:

3 33 (1) The name and address of the person who has
3 34 taken or injured the feral swine.

3 35 (2) The county and township where the feral swine
3 36 were taken or injured.

3 37 (3) The date when the feral swine were taken or
3 38 injured.

3 39 (4) The number of feral swine found by the person
3 40 on the date when the feral swine were taken or
3 41 injured.

3 42 b. A person who takes a feral swine shall retain
3 43 the feral swine or its carcass for examination by the
3 44 authorized department. The authorized department may
3 45 temporarily or permanently confiscate the carcass for
3 46 purposes of analysis including disease testing.

3 47 c. A person who does not report taking a feral
3 48 swine as required in this subsection is subject to a
3 49 civil penalty of not more than one hundred dollars.
3 50 The moneys collected by the department shall be

4 1 deposited into the general fund of the state.

4 2 Sec. 5. NEW SECTION. 171.203 PROHIBITIONS AND
4 3 PENALTY.

4 4 1. A person shall not do any of the following:

4 5 a. Move a feral swine into or within this state.

4 6 b. Release or allow the escape of feral swine from
4 7 the person's custody or control.

4 8 c. Acquire custody or control of a feral swine in
4 9 this state.

4 10 d. Maintain custody or control of a feral swine in
4 11 this state on and after August 1, 2006.

4 12 2. a. A person who violates subsection 1 is
4 13 guilty of an aggravated misdemeanor. A person is
4 14 guilty of a separate offense for each feral swine
4 15 which is the subject of violation.

4 16 b. Upon conviction of violating subsection 1, a
4 17 court may, as part of the judgment, revoke or suspend
4 18 a license issued pursuant to chapter 481A or 483A for
4 19 any definite period of time.

4 20 Sec. 6. NEW SECTION. 171.204 MAINTAINING FERAL
4 21 SWINE == INJUNCTIVE RELIEF.

4 22 A court may prevent and restrain a violation of
4 23 section 171.203 through the issuance of an injunction.
4 24 The attorney general or a county attorney shall
4 25 institute an action on behalf of the state to prevent
4 26 or restrain a violation of section 171.203.

4 27 Sec. 7. NEW SECTION. 171.205 MAINTAINING FERAL
4 28 SWINE == STATE INVESTIGATORY AND LEGAL EXPENSES.

4 29 A person convicted of violating section 171.203 is
4 30 liable for all of the following:

4 31 1. The amount to indemnify the state or a local
4 32 authority for investigative and eradivative expenses
4 33 incurred by the state or the local authority. The
4 34 amount of the indemnification shall not exceed ten
4 35 thousand dollars for each feral swine involved in the
4 36 violation. The amount paid for indemnification shall
4 37 be deposited in the general fund of the state.
4 38 However, if the investigation or eradication is not
4 39 conducted by an authorized department or other state
4 40 agency, the amount shall be paid to the local
4 41 authority which conducts the investigation or
4 42 eradication for deposit in the general fund of the
4 43 county or city, as the case requires.

4 44 2. If the attorney general or a county attorney is
4 45 the prevailing party in an action for a violation of
4 46 section 171.203, the prevailing party shall be awarded
4 47 court costs and reasonable attorney fees, which shall
4 48 be taxed as part of the costs of the action. If the
4 49 attorney general is the prevailing party, the moneys
4 50 shall be deposited in the general fund of the state.
5 1 If the county is the prevailing party, the moneys
5 2 shall be deposited in the general fund of the county.

5 3 Sec. 8. NEW SECTION. 171.206 MAINTAINING FERAL
5 4 SWINE == STRICT LIABILITY == ATTORNEY FEES.

5 5 If a person is convicted of violating section
5 6 171.203, the person is strictly liable for damages
5 7 caused to the property of another person. The person
5 8 who is the prevailing plaintiff in the case shall be
5 9 awarded court costs and reasonable attorney fees,
5 10 which shall be taxed as part of the costs of the
5 11 action.

5 12 Sec. 9. NEW SECTION. 171.207 TAKING OR CAPTURING
5 13 FERAL SWINE BY THE DEPARTMENT OR A LOCAL AUTHORITY.

5 14 An authorized department or local authority may
5 15 take or capture feral swine which are maintained on
5 16 land in violation of section 171.203, if one of the
5 17 following applies:

5 18 1. The landowner provides consent.

5 19 2. If the authorized department or local authority
5 20 has credible reason to believe that feral swine are on
5 21 land, the authorized department or local authority may
5 22 enter onto the land pursuant to a warrant issued by a
5 23 court, or otherwise enter onto the land in a manner
5 24 consistent with the laws of this state and the United
5 25 States, including Article I, section 8, of the
5 26 Constitution of the State of Iowa, or the fourth
5 27 amendment to the Constitution of the United States.

5 28 Sec. 10. NEW SECTION. 171.208 FERAL SWINE
5 29 INDEMNITY FUND.

5 30 1. A feral swine indemnity fund is created as a
5 31 separate fund in the state treasury under the control
5 32 of the department. The general fund of the state is
5 33 not liable for claims presented against the indemnity
5 34 fund.

5 35 2. The feral swine indemnity fund consists of any
5 36 moneys appropriated by the general assembly and any

5 37 other moneys available to and obtained or accepted by
5 38 the department from the federal government or private
5 39 sources for placement in the fund. Notwithstanding
5 40 section 12C.7, subsection 2, interest or earnings on
5 41 moneys deposited in the fund shall be credited to the
5 42 fund.

5 43 3. The moneys deposited in the feral swine
5 44 indemnity fund are appropriated to the department
5 45 exclusively for paying claims of persons who purchased
5 46 feral swine on or before the effective date of this
5 47 Act.

5 48 4. In order to be eligible to file a claim for
5 49 indemnification, a person shall do all of the
5 50 following:

6 1 a. File an application, including supporting
6 2 documentation, with the department as required by the
6 3 department pursuant to procedures established by the
6 4 department. The application shall state the amount of
6 5 the claim. The application shall be filed with the
6 6 department not later than September 30, 2006.

6 7 b. Relinquish custody or control of the feral
6 8 swine to an authorized department or a local
6 9 authority, as required by the department of
6 10 agriculture and land stewardship.

6 11 5. The department shall determine the validity of
6 12 a claim which is submitted by an eligible person as
6 13 part of the application for indemnification as
6 14 provided in this section. The dollar value of the
6 15 claim shall be based on a formula established by rule
6 16 and adopted by the department. The formula shall
6 17 provide for the payment of the fair market value of
6 18 the feral swine based on market prices paid for
6 19 similar swine according to categories or criteria
6 20 established by the department.

6 21 6. Upon a determination that the amount claimed in
6 22 a person's application is valid, the department shall
6 23 provide for payment of one hundred percent of the
6 24 amount claimed. The department shall pay all valid
6 25 claims not later than January 1, 2007. If the
6 26 department determines that there are insufficient
6 27 moneys in the feral swine indemnity fund to fully
6 28 satisfy the amounts claimed in valid applications
6 29 submitted by all eligible persons, the department
6 30 shall prorate the amount paid to all eligible persons.

6 31 7. A person's submission of an application under
6 32 this section constitutes a waiver of any further claim
6 33 by the person against the state regarding the feral
6 34 swine.

6 35 8. This section is repealed on July 1, 2007. Any
6 36 moneys remaining in the feral swine indemnity fund on
6 37 that date shall be distributed as follows:

6 38 a. The amount of moneys which were contributed to
6 39 the fund by persons other than a state or federal
6 40 government source shall be refunded to the respective
6 41 persons. If the department determines that there are
6 42 insufficient moneys in the fund to fully satisfy the
6 43 amounts for refunds to all persons, the department
6 44 shall prorate the amount of refunds paid to those
6 45 persons based on their contributions.

6 46 b. Any remaining moneys that were appropriated by
6 47 a state or federal government source shall be repaid
6 48 to that source. If the department determines that
6 49 there are insufficient moneys in the fund to fully
6 50 satisfy the amounts for repayments to these sources,
7 1 the department shall prorate the amounts repaid to
7 2 those sources based on the amounts appropriated.

7 3 9. This section does not imply any guarantee or
7 4 obligation on the part of the state of Iowa, the
7 5 department of agriculture and land stewardship, or any
7 6 state agency, employee, or official, either elective
7 7 or appointive.

7 8 SUBCHAPTER III
7 9 ESTRAY SWINE

7 10 Sec. 11. NEW SECTION. 171.301 ORDINARY
7 11 LIABILITY.

7 12 Nothing in this subchapter affects a responsible
7 13 party's liability which arises out of estray swine and
7 14 any remedies available to an injured party, as
7 15 provided under statute, common law, or contract.

7 16 Sec. 12. NEW SECTION. 171.302 TAKING OR
7 17 CAPTURING ESTRAY SWINE BY THE DEPARTMENT OR A LOCAL

7 18 AUTHORITY.

7 19 An authorized department or local authority may
7 20 take or capture estray swine on public land. An
7 21 authorized department or local authority may take or
7 22 capture estray swine on land other than public land if
7 23 one of the following applies:

7 24 1. The landowner provides consent.
7 25 2. If the authorized department or local authority
7 26 has credible reason to believe that estray swine are
7 27 on land, the authorized department or local authority
7 28 may enter onto the land pursuant to a warrant issued
7 29 by a court, or otherwise enter onto the land in a
7 30 manner consistent with the laws of this state and the
7 31 United States, including Article I, section 8, of the
7 32 Constitution of the State of Iowa, or the fourth
7 33 amendment to the Constitution of the United States.

7 34 Sec. 13. NEW SECTION. 171.303 TAKING OF ESTRAY
7 35 SWINE BY A PERSON OTHER THAN THE DEPARTMENT OR A LOCAL
7 36 AUTHORITY == CRIMINAL PENALTY.

7 37 A person other than an authorized department or a
7 38 local authority may take estray swine only as provided
7 39 in this section.

7 40 1. The person may take the estray swine at any
7 41 time regardless of whether the person has been issued
7 42 a license under chapter 483A, unless a person's
7 43 hunting license has been suspended or revoked as
7 44 provided in chapter 481A, including but not limited to
7 45 section 481A.134, or chapter 483A, including but not
7 46 limited to section 483A.21.

7 47 2. a. The person shall not take or capture estray
7 48 swine on public land unless in compliance with
7 49 regulations adopted by rule of the department of
7 50 natural resources or an ordinance of the local

8 1 authority that is responsible for the public land.

8 2 b. The person shall not take or capture estray
8 3 swine on land other than public land unless the
8 4 landowner provides consent.

8 5 3. A person who violates this section is guilty of
8 6 a simple misdemeanor. A person is guilty of a
8 7 separate offense for each estray swine which is the
8 8 subject of violation.

8 9 SUBCHAPTER IV

8 10 HUNTING

8 11 Sec. 14. NEW SECTION. 171.401 HUNTS AND SCHEDULE
8 12 OF HUNTS == PENALTY.

8 13 1. Except as provided in subsection 2, a person
8 14 maintaining custody or control of swine shall not
8 15 provide persons with the opportunity to hunt the
8 16 swine.

8 17 2. a. A person maintaining custody or control of
8 18 swine shall not provide for a hunt of the swine if the
8 19 person sold or offered to sell the hunt, or scheduled
8 20 a date or time for the hunt, on or after April 15,
8 21 2006.

8 22 b. A person maintaining custody or control of
8 23 swine who provides persons with the opportunity to
8 24 hunt the swine shall report the schedule of all hunts
8 25 of the swine to the department not later than May 15,
8 26 2006, according to procedures required by the
8 27 department.

8 28 c. This subsection is repealed on July 1, 2007.

8 29 3. A person who violates this section is subject
8 30 to a civil penalty of not more than one thousand
8 31 dollars. The amount of civil penalties collected by
8 32 the department shall be deposited in the general fund
8 33 of the state.

8 34 Sec. 15. NEW SECTION. 171.402 TAKING OR
8 35 CAPTURING SWINE BY THE DEPARTMENT OR A LOCAL
8 36 AUTHORITY.

8 37 An authorized department or local authority may
8 38 take or capture swine which are maintained on land in
8 39 violation of section 171.401 if one of the following
8 40 applies:

8 41 1. The landowner provides consent.

8 42 2. If the authorized department or local authority
8 43 has credible reason to believe that swine are on land,
8 44 the authorized department or local authority may enter
8 45 onto the land pursuant to a warrant issued by a court,
8 46 or otherwise enter onto the land in a manner
8 47 consistent with the laws of this state and the United
8 48 States, including Article I, section 8, of the

8 49 Constitution of the State of Iowa, or the fourth
8 50 amendment to the Constitution of the United States.
9 1 Sec. 16. Section 170.6, Code 2005, is amended by
9 2 adding the following new subsection:
9 3 NEW SUBSECTION. 3. The department shall revoke a
9 4 fence certification issued pursuant to section 170.4
9 5 or disapprove a person's application for the
9 6 certification of a fence pursuant to that section for
9 7 a period of three years if the person violates a
9 8 provision of section 171.203 or 171.401.
9 9 Sec. 17. Section 484B.13, Code 2005, is amended to
9 10 read as follows:
9 11 484B.13 ~~LICENSE REFUSAL~~ DISCIPLINARY ACTION.
9 12 1. The department may either refuse to issue,
9 13 refuse to renew, or suspend or revoke a person's
9 14 hunting preserve operator's license issued pursuant to
9 15 section 484B.4 if the department finds that the
9 16 licensed area or the operator or employees of the
9 17 licensed area are not in compliance with this chapter,
9 18 or that the property or area is operated in violation
9 19 of this chapter or administrative rules adopted under
9 20 this chapter.
9 21 2. The department shall revoke a person's hunting
9 22 preserve operator's license issued pursuant to section
9 23 484B.4, or disapprove a person's application for a
9 24 hunting preserve operator's license issued under that
9 25 section for a period of three years if the person
9 26 violates a provision of section 171.203 or 171.401.
9 27 Sec. 18. Section 484C.13, Code Supplement 2005, is
9 28 amended by adding the following new subsection:
9 29 NEW SUBSECTION. 4. The department shall revoke a
9 30 fence certification issued pursuant to section 484C.6
9 31 or disapprove a person's application for the
9 32 certification of a fence issued pursuant to that
9 33 section for a period of three years if the person
9 34 violates a provision of section 171.203 or 171.401.
9 35 Sec. 19. ADOPTION OF RULES. The department of
9 36 agriculture and land stewardship shall adopt all rules
9 37 necessary to administer this Act by July 1, 2006. If
9 38 the department adopts the rules pursuant to section
9 39 17A.4, subsection 2, and section 17A.5, subsection 2,
9 40 it shall immediately readopt the rules as provided in
9 41 section 17A.4, subsection 1, and section 17A.5,
9 42 subsection 1.
9 43 Sec. 101. CONTINGENT EFFECTIVE DATE. Section
9 44 171.208, as enacted in this Act, takes effect upon the
9 45 appropriation of moneys into the feral swine indemnity
9 46 fund by July 1, 2006.
9 47 Sec. 20. EFFECTIVE DATE. Except as provided in
9 48 section 101 of this Act, this Act, being deemed of
9 49 immediate importance, takes effect upon enactment.>
9 50 #2. Title page, line 1, by striking the word
10 1 <and>.
10 2 #3. Title page, line 2, by inserting after the
10 3 word <penalties> the following: <, and providing an
10 4 effective date>.
10 5 #4. By renumbering as necessary.
10 6
10 7
10 8
10 9 THOMAS G. COURTNEY
10 10 SF 2350.703 81
10 11 da/gg/5871